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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

HUMBERTO LOPEZ ROMERO,

Defendant and Appellant.

E044878

(Super.Ct.No. RIF117418)

OPINION

APPEAL from the Superior Court of Riverside County. James L. Quaschnick, Judge. (Retired judge of the Fresno Super. Ct., assigned by the Chief Justice pursuant to art. VI, § 6, of the Cal. Const.) Affirmed.

David McNeil Morse, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Lilia E. Garcia, Raquel

M. Gonzales and Lynn McGinnis, Deputy Attorneys General, for Plaintiff and Respondent.

### 1. Introduction

Defendant was convicted of shooting Ramiro Valle (Valle) three times when defendant confronted Valle at Valle's storage facility. Valle testified that defendant told him he was going to pay for what Valle had done to defendant's boss. When Valle approached defendant, defendant fired six shots, three of which hit Valle. Valle recovered but died prior to the September 2006 trial of defendant.

Defendant complains that his counsel failed at trial to introduce evidence of Valle's conviction for smuggling materials used in the manufacturing of methamphetamine.

We find that failure of defendant's counsel to prove Valle's convictions did not affect the jury's finding defendant guilty of attempted murder of Valle.

### 2. Facts

Valle was at his rental storage facility in Riverside County when defendant confronted him with a gun, ordered him to go inside of his storage facility, take out everything from his pockets, and that he, Valle, would pay for what he did to defendant's boss. When Valle refused to go inside the facility and instead approached defendant vowing to take the gun away, defendant shot him three times.

Defendant was ultimately identified from his fingerprint and from a photo lineup. Later an employee of the storage facility who had seen defendant when he was at the storage facility on the day of the shooting, identified defendant's picture. Finally, a

detective from Riverside County interviewed defendant at the West Valley Detention Center at which time defendant admitted he had shot Valle.

Defendant testified that a man by the name of Paisa had asked him to pick up some boxes for him from Valle. Paisa gave defendant a gun to protect the boxes he was to pick up. Valle testified at the preliminary hearing that when defendant approached him he told Valle that “You’re going to pay [for] what you did to my boss.” Defendant claims that when he told Valle why he was there Valle became furious and came toward him. Defendant admits that he shot at the door of Valle’s truck, but not at Valle. Defendant testified that Valle started for him, saying that he was going to kill him. At that time defendant fired two more shots at Valle and then left for his car.

At the preliminary hearing, Valle testified that he was hit by three bullets, two bullets hit his car, and one hit the door.

### 3. Ineffective Assistance of Counsel

Defendant asserts only one basis for reversal of his conviction: ineffective assistance of counsel. Counsel for defendant had evidence of Valle’s convictions for importing and smuggling pharmaceuticals. Counsel for the People had evidence that Valle had pled guilty in Riverside County to possession of items for the manufacturing of drugs. In addition Valle had a federal case in Idaho. The court agreed that Valle’s prior convictions were relevant and the People were also willing to stipulate to those convictions. Defendant asserts that the failure of counsel to introduce Valle’s felony convictions was evidence of ineffective assistance of counsel citing *Strickland v. Washington* (1984) 466 U.S. 668, 686-692.

Counsel for the People did not object to evidence of Valle's prior felony convictions. Counsel for Valle, for reasons not disclosed, failed to introduce the record of those convictions. Defendant contends that his counsel's representation was deficient, that there was no tactical basis for the failure to introduce the prior convictions, and that his conviction should be reversed.

As the court in *People v. Torres* (1995) 33 Cal.App.4th 37 indicated at page 48, “[b]oth the Sixth Amendment of the United States Constitution and article I, section 15, of the California Constitution guarantee a criminal defendant a right to the assistance of counsel. This right encompasses the right to *effective* assistance of counsel, without which the right to a trial itself would be ‘of little avail.’” Effective assistance of counsel means assistance which meets “an objective standard of reasonableness. . . [¶] . . . under prevailing professional norms.” (*Strickland v. Washington, supra*, 460 U.S. at p. 688.)

The *Strickland v. Washington, supra*, 460 U.S. court at page 691, observed that “[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.” In this case, the error did not have an effect upon the judgment of defendant.

There was no evidence to contradict the testimony that defendant shot Valle three times and that Valle sustained substantial injuries. The proposed testimony pertaining to the illegal actions of Valle could not have offset the actions of defendant, even if counsel for defendant had provided the evidence of Valle's alleged illegal activities.

4. Disposition

We affirm the judgment.

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s/Gaut  
Acting P.J.

We concur:

s/King  
J.

s/Miller  
J.